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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,578	10/19/2000	Mark Salerno	948-5	6508

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT PAPER NUMBER

3627

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/692,578

Applicant(s)

SALERNO, MARK

Examiner

Steven B. McAllister

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-99 is/are pending in the application.
- 4a) Of the above claim(s) 1-50 and 66-99 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/01, 4/04, 1/02, 4/
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group IV, claims 51-65 in the reply filed on 9/3/2004 is acknowledged. The traversal is on the ground(s) that the claims are related and should therefore be examined together. This is not found persuasive because the subject matter of the groups forms different inventions and would required different searches.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-50 and 66-99 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/3/2004.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 51-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 51 is indefinite because it appears that both the empty and occupied storage states are triggered by "the status switch being selected".

Claim 56 is unclear because it recites only a "pan fill level", but this is only information and is not an further element of the apparatus.

Claim 58 is unclear because it recites only a "activity level", but this is only information and is not an further element of the apparatus.

Claim 60 is unclear because it would appear that the activity level switch changes only itself when activated (see last two lines).

Claim 65 is unclear because "in alignment" is unclear.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 51-53, and 56-64 are rejected under 35 U.S.C. 102(e) as being anticipated by Savage (6,026,372).

Savage shows a processing circuit; a food product status switch associated with a storage location and coupled to the circuit, comprising the ECR entry panel 21 and means for providing the "finished input" 13; and a food process status indicator associated with the storage location coupled to the processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, and storage time exceeded, respectively and in response to the food product status switch. Savage inherently shows a storage timer associated with the storage location for determining when a product exceeds its acceptable hold time since the system subtracts the time to prepare an item from the time that a certain number of the item are desired, and in order to know how many to order, it is necessary to whether items currently being held will be expired at the time when a certain number are desired (see e.g., col. 2, lines 53-65).

As to claims 56-59, and 62, Savage shows a pan fill level and activity level, the pan fill level changing as a function of the activity level.

As to claim 60 and 61, Savage shows an activity level switch for changing the activity level in response to time of day or events (e.g., col. 3, lines 17-23).

As to claims 63 and 64, Savage shows display and a menu associated with the storage location having a pan fill level associated with it and having a selectable menu switch.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51-53, and 56-65, are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage (6,026,372) in view of Walker et al (6,298,331).

Alternatively, Savage shows a processing circuit; a food product status switch associated with a storage location and coupled to the circuit, comprising the ECR entry panel 21 and means for providing the "finished input" 13; and a food process status indicator associated with the storage location coupled to the processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, and storage time exceeded, respectively and in response to the food product status switch. Savage does not show a storage time associated with the storage location or a third status indicator. Walker et al show a storage timer and third status indicator. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Savage by providing the storage time and status indicator as taught by Walker et al in order to reduce waste.

As to claim 52, Savage in view of Walker show the status indicator having a fourth state showing that cooking should commence as claimed (e.g., via the McDonald's software).

As to claims 56-59, and 62, Savage in view of Walker et al show a pan fill level and activity level, the pan fill level changing as a function of the activity level.

As to claim 60 and 61, Savage in view of Walker et al show an activity level switch for changing the activity level in response to time of day or events (e.g., col. 3, lines 17-23).

As to claims 63 and 64, Savage in view of Walker et al show display and a menu associated with the storage location having a pan fill level associated with it and having a selectable menu switch.

As to claim 65, Savage in view of Walker et al show all elements except that the food product status switch is in alignment with the food product pan in the storage area. However, it would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing a switch in alignment with the food storage pan in order to provide a signal based on actual conditions in the storage area.

Claims 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage in view of Walker et al as applied to claim 51 above, and further in view of Koether (5,875,430)

Savage in view of Walker et al show all elements except an active switch associated with the storage area wherein the indicator has a seventh state indicating that the area is not being used. Koether shows these elements (e.g., Fig. 7A). It would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing these elements in order to prevent malfunctioning apparatus from being used until it has been repaired.

Claims 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage in view of Koether (5,875,430)

Savage shows all elements except an active switch associated with the storage area wherein the indicator has a seventh state indicating that the area is not being used. Koether shows these elements (e.g., Fig. 7A). It would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing these elements in order to prevent malfunctioning apparatus from being used until it has been repaired.

Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Savage.

As to claim 65, Savage shows all elements except that the food product status switch is in alignment with the food product pan in the storage area. However, it would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing a switch in alignment with the food storage pan in order to provide a signal based on actual conditions in the storage area.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

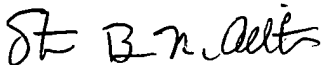
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Steven B. McAllister

**STEVE B. MCALLISTER**  
**PRIMARY EXAMINER**